SUPREME COURT
OF THE STATE OF RHODE ISLAND

No. 08-0335-M.P.
No. 09-0001-M.P.

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**WILLIAM V. IRONS,**
**Plaintiff/Respondent**

**v.**

**THE RHODE ISLAND ETHICS COMMISSION and its Members, James Lynch, Sr., Barbara Binder, George Weavill, Jr., Frederick K. Butler, Ross E. Cheit, Richard Kirby, James V. Murray, and James C. Segovis, in their official capacities,**
**Defendants/Petitioners**

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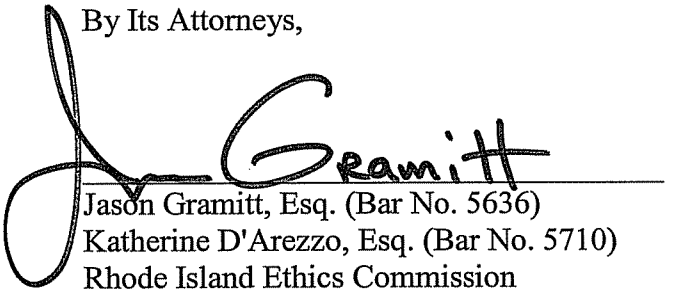
On Petition for Writ of Certiorari from an Order of the Superior Court in an Administrative Appeal (C.A. No. PC07-6666) from an Order of the Rhode Island Ethics Commission.

# BRIEF OF THE PETITIONERS, THE RHODE ISLAND ETHICS COMMISSION AND ITS MEMBERS IN THEIR OFFICIAL CAPACITIES

RHODE ISLAND ETHICS COMMISSION

By Its Attorneys,



Jason Gramitt, Esq. (Bar No. 5636)
Katherine D'Arezzo, Esq. (Bar No. 5710)
Rhode Island Ethics Commission
40 Fountain Street
Providence, RI 02903
Tel: (401) 222-3790
Fax: (401) 222-3382
jgramitt@ethics.state.ri.us

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## INTRODUCTION

The following is this Court's previously published account of the history and purposes of the 1986 Ethics Amendment to the Rhode Island Constitution, taken from the case of In re Advisory Opinion to the Governor, 612 A.2d 1 (R.I. 1992).

> The years preceding the 1986 constitutional convention were marked by scandal and corruption at all levels of government. Indeed, widespread breaches of trust, cronyism, impropriety, and other violations of ethical standards decimated the public's trust in government. Many articles appeared in both national and international news periodicals documenting the governmental crisis that the state faced. Despite the efforts of two pre-existing ethics commissions, the Conflict of Interest Commission and the Governor's Ethics Commission, the public perception was that government lacked the ability to control ethical conduct among its own members.

Id. at 11.

> As a result the overwhelming majority of Rhode Island's citizens were at the very least distrustful of their elected and appointed officials and of government as a whole. In response to public outcry for reform at all levels of government, an ethics committee was set up as part of the constitutional convention and given the task of examining unethical governmental conduct and proposing measures to bring about ethical reform that would ultimately restore the public trust.

Id. at 2.

> [I]n addressing ethics reform, many committee members expressed a distrust of the General Assembly and the need to "get the fox out of the hen house." In construing such comments, we adhere to the proposition set forth by commission proponents who suggest that such comments indicate a significant concern that if the task of adopting a code of ethics was left to the General Assembly, "the sharp teeth of any code of ethics could be removed *by those who feared being bitten.*" Further, the presentational comments by the committee chairman before the entire convention body indicate an express awareness by committee members of the rampant corruption and unethical conduct that had been plaguing the state in preceding years.

Id. at 11 (emphasis added).

> In November 1986 the electorate of the State of Rhode Island spoke out and approved the ethics amendment whereby an independent non-partisan ethics commission would be formed to oversee ethics in State Government. Thereafter

the ethics amendment was made part of the Rhode Island Constitution as article 3, sections 7 and 8. Specifically section 7 states:

> "Ethical Conduct.---The people of the State of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and *not use their position for private gain* or advantage. Such persons shall hold their positions during good behavior."

Section 8 provides:

> "Ethics Commission---Code of Ethics.---The general assembly shall establish an independent non-partisan ethics commission which shall adopt *a code of ethics including*, but not limited to, provisions on *conflicts of interest*, confidential information, *use of position*, contracts with government agencies and financial disclosure. *All elected and appointed officials* and employees of state and local government, of boards, commissions and agencies *shall be subject to the code of ethics. The ethics commission shall have the authority to investigate violations of the code of ethics and to impose penalties, as provided by law*; and the commission shall have the power to remove from office officials who are not subject to impeachment."

Id. at 3 (quoting R.I. Const. art. III, sec. 7 & 8) (emphasis added).

> If the foregoing demonstrates anything at all, it is that the public did not trust government and its leaders. Its lack of trust was clearly expressed through the public's representative delegates both during the ethics committee deliberations and before the entire convention body. Such comments made it undeniably clear that the basic motivating factor in enacting the ethics amendment was to restore the public's trust in government, which, as demonstrated, the framers and the electorate believed could only be accomplished by bestowing the power to legislate substantive ethics laws upon an independent nonpartisan ethics commission subject only to judicial review.

Id. at 11-12.

For twenty-two years following the historic enactment of the 1986 Ethics Amendment, the Ethics Commission has consistently implemented the people's unequivocal directive to adopt and enforce provisions on conflicts of interest and improper use of position that apply to all state

elected officials, including legislators.[1] This well understood jurisdiction ended with the Superior Court's Decision in the instant case, declaring that the drafters of the Ethics Amendment did not intend for the newly established Ethics Commission to regulate or even question members of the General Assembly concerning the improper use of their legislative powers.

The Superior Court's Decision sets the State of Rhode Island back twenty-two years and, more importantly, disenfranchises "the 1986 electorate [who] overwhelmingly approved the ethics amendment" in order "to restore the public's trust in government, which, as demonstrated, the framers and the electorate believed could only be accomplished by bestowing the power to legislate substantive ethics laws upon an independent nonpartisan ethics commission subject only to judicial review." Id. at 12, 14.

## FACTS AND TRAVEL OF THE CASE

On January 20, 2004, two members of the public initiated Ethics Complaint No. 2004-1 against then-Rhode Island State Senate President, William V. Irons ("Irons"), alleging that Irons had violated the Rhode Island Code of Ethics through the use of his position as Senate President to financially benefit his business associate, CVS Corporation. See Complaint No. 2004-1; Appendix ("App.") Tab A. In the wake of these and other allegations, Irons had, weeks earlier,

[1] Some examples of cases since the enactment of the Ethics Amendment in which the Ethics Commission asserted uncontested jurisdiction to adjudicate allegations of legislative misuse of position and conflicts of interest include: (1) Complaint Nos. 92-39 and 92-40 regarding a legislator's misuse of his position by participating in DEPCO-related legislation; (2) Complaint No. 93-66 regarding a legislator's misuse of position by working on a bill that would financially benefit his legal clients; (3) Complaint Nos. 2003-6 and 2003-7 regarding a legislator's misuse of position by participating in the introduction and passage of legislation that would financially benefit his employer; and (4) Complaint Nos. 2003-9, 2004-4 and 2004-8 regarding a legislator's misuse of position to advance legislation that would financially benefit his business associate.

voluntarily stepped down as Senate President. Approximately two weeks after the filing of the complaint, he resigned from the Rhode Island Senate entirely.[2]

Complaint No. 2004-1 came before the Ethics Commission on November 15, 2004, for a hearing to determine whether probable cause existed to support its allegations. After the hearing, the Commission held that probable cause did not exist to support three of the five allegations; these were dismissed. However, the Commission determined that probable cause did exist relative to two counts which alleged violations of R.I. Gen. Laws § 36-14-5(a)(substantial conflict of interest) and § 36-14-5(d)(use of public office) respectively. These remaining counts read as follows:

> 1) There exists probable cause that, by his participation in the Senate Corporations Committee's consideration of Pharmacy Freedom of Choice legislation in the 1999 and 2000 legislative sessions, the Respondent participated in a matter in which *he had a substantial conflict of interest*, in violation of R.I. Gen. Laws § 36-14-5(a).
>
> 3) There exists probable cause that, by his participation in the Senate Corporations Committee's consideration of Pharmacy Freedom of Choice legislation in the 1999 and 2000 legislative sessions, the Respondent *used his public office to obtain financial gain* for CVS, his business associate, in violation of R.I. Gen. Laws § 36-14-5(d).

Order and Finding of Probable Cause, at paras. 1, 3 (November 15, 2004)(emphasis added); App. Tab B.

On November 6, 2007, Irons filed a Motion to Dismiss the remaining ethics charges on the grounds that he was immune from prosecution pursuant to Article VI, Section 5 of the Rhode Island Constitution, otherwise known as the Speech in Debate Clause, which reads: "For any speech in either house, no member shall be questioned in any other place." R.I. Const. art. VI, sec. 5. Irons also filed a Motion to Implement Demand for Jury Trial. Following proper

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[2] Katherine Gregg, *Senate President quits in flap over clients*, Providence Journal, Jan. 1, 2004. http://www.projo.com/news/content/projo_20040101_irons1.59b17.html

objections by the Ethics Commission prosecutors, on November 20, 2007, the Ethics Commission heard Irons' motions. On November 28, 2007, the Ethics Commission issued an Order Denying Irons' Motion to Dismiss (App. Tab C) and an Order Denying Irons' Motion to Implement Demand for Jury Trial (App. Tab D).

On December 13, 2007, Irons filed an interlocutory administrative appeal in the Superior Court (PC2007-6666) pursuant to the Rhode Island Administrative Procedures Act (R.I. Gen. Laws § 42-35-15) asking the Court to reverse the Ethics Commission's orders denying Irons' Motion to Dismiss and his Motion to Implement Demand for Jury Trial.[3] Complaint, C.A. No. PC2007-6666; App. Tab E. On January 16, 2008, by agreement of the parties, the Superior Court stayed further Ethics Commission proceedings against Irons pending resolution of the administrative appeal.

The parties filed memoranda with the Superior Court and presented oral argument at hearing on July 30, 2008. See Transcript of July 30, 2008 Hearing Before Superior Court, C.A. No. PC2007-6666 (hereinafter, "Tr."); App. Tab F. Irons argued that the Speech in Debate Clause provided him with absolute immunity from any prosecution by the Ethics Commission that was based on his legislative activities, whether or not he had a conflict of interest or had intended to use his office for financial benefit as alleged in the ethics complaint. The Ethics Commission countered that the 1986 Ethics Amendment to the Rhode Island Constitution contained a clear conferral of constitutional jurisdiction to a single entity, the independent and

[3] Since the filing of the administrative appeal, two of the Ethics Commission members named in the caption, George Weavill, Jr. and James C. Segovis, have been replaced. Their replacements are J. William W. Harsch and Deborah M. Cerullo SSND. Furthermore, former member Richard Kirby has resigned, but has not yet been replaced. To the extent that individual Commission members are proper parties to this administrative appeal, which had been properly captioned "In re William V. Irons" before the Ethics Commission, it is submitted that the caption should be amended to reflect this change in membership.

nonpartisan Ethics Commission, to enforce mandatory provisions on use of position and conflicts of interest against all state elected officials, including legislators.

On October 29, 2008, the Superior Court issued its Decision. Decision, PC2007-6666 (Oct. 29, 2008)(hereinafter, "Decision"); App. Tab G. Therein, the Court held that the Speech in Debate Clause precluded the Ethics Commission's inquiry into Irons' past legislative acts and ordered that the ethics complaint be dismissed for that reason. Decision, at p. 28. The Court also held that, were the complaint not dismissed, Irons would not have been entitled to a trial by jury. Id. A final Order entered on December 3, 2008, dismissing the ethics complaint.[4] App. Tab H. The Superior Court also issued an Order denying the Ethics Commission's Motion to Stay Enforcement of Final Order pending the Supreme Court's review pursuant to a writ of *certiorari*.

The Ethics Commission and its Members timely filed the instant Petition for Issuance of Writ of Certiorari on December 22, 2008, in accordance with § 42-35-16 of the Administrative Procedures Act, seeking review and reversal of the Superior Court's dismissal of the Ethics Complaint on the basis of the Speech in Debate Clause. On December 23, 2009, William V. Irons filed a Conditional Cross-Petition for Writ of Certiorari, seeking review of the Superior Court's ruling that Irons was not entitled to a trial by jury.

This Court entered an Order on January 15, 2009, granting the petitions of both the Ethics Commission and Irons. A Writ of Certiorari issued as to both the Petition and Cross-Petition on January 23, 2009. The matters were docketed in the Supreme Court on February 4, 2009.

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[4] It should be noted that the Ethics Commission objected to the form of the final Order prepared by Irons' legal counsel and approved by the Superior Court. App. Tab H (Final Order, PC2007-6666, Dec. 3, 2008). It was, and is, the Ethics Commission's position that, given the posture of the case as an administrative appeal of the Ethics Commission's denial of a motion to dismiss, the reviewing court's final order should have *reversed* the Ethics Commission's denial of Irons' motion to dismiss and *remanded* the case to the Ethics Commission with instructions to dismiss. Instead, the Superior Court itself dismissed the ethics complaint.

## ARGUMENT

### Introduction

In its Decision, the Superior Court held that members of the General Assembly are immune from prosecution by the Ethics Commission concerning matters involving conflicts of interest and improper use of office to benefit a business associate. Decision, at p. 16. Whether this holding is correct depends on whether the Ethics Amendment's express conferral of authority upon the Ethics Commission to investigate such allegations against "all" state elected officials was meant to be limited to the five General Officers, or whether the term was meant to also apply to our elected legislators.

"In construing constitutional amendments, [the Court's] chief purpose is to give effect to the intent of the framers. In re Advisory Opinion to the Governor, 612 A.2d 1, 7 (R.I. 1992)(citing State ex. Rel. Webb v. Cianci, 591 A.2d 1193, 1201 (R.I. 1991)). "In doing so, [the Court relies] on the well-established rule of constitutional construction that when words in a constitution are free from ambiguity, they are to be given their plain, ordinary, and usually accepted meaning." Id. (citing Mikaelian v. Drug Abuse Unit, 501 A.2d 721, 723 (R.I. 1985)). "[N]o word or section must be assumed to have been unnecessarily used or needlessly added." Id. (citing Kennedy v. Cumberland Engineering co., 471 A.2d 195, 198 (R.I. 1984)). The Court will "'presume the language was carefully weighed and that its terms imply a definite meaning.'" Id. (quoting Bailey v. Baronian, 120 R.I. 389, 391, 394 A.2d 1338, 1339 (1978)).

In addition to the above principles of construction, "when one is construing constitutional provisions, it is indeed proper to 'consult what extrinsic sources are available: not only the proceedings of the Constitutional Convention itself but also legislation relating to the constitutional provision in question adopted at the same time as the constitutional amendment or

subsequently.'" Id. at 7-8 (quoting Cianci, 591 A.2d at 1201). Finally, the Rhode Island Supreme Court has noted that "'[i]n the construction of the constitution, we must look to the history of the times, and examine the state of things existing when it was framed and adopted . . . .'" Id. at 8 (quoting Rhode Island v. Massachusetts, 37 U.S. 657, 723 (1838)).

The Superior Court did not follow the above, well-established rules of construction. The Court did not sufficiently respect the plain and unambiguous language of the Ethics Amendment, nor did it even consider the clear intent of its framers as overwhelmingly evidenced by reliable extrinsic evidence. Instead, the Superior Court narrowly focused on readily distinguishable Speech in Debate decisions of this Court and of the United States Supreme Court that neither involved nor envisioned the existence of a later-enacted Ethics Amendment. Decision, at p. 7-12.

The Superior Court should have closely followed this Court's analysis in the case of In re Advisory Opinion to the Governor, 612 A.2d 1 (R.I. 1992)(App. Tab K), which involved a directly analogous conflict between the Ethics Amendment and the Legislative Powers Clause, Article VI, Section 2, of the Rhode Island Constitution. Just as this Court found in that case, the Superior Court in this matter should have determined that the Ethics Amendment's clear grant of jurisdiction modified, impliedly, but clearly, the scope of a prior-enacted clause.

For these reasons and those outlined below, the Petitioners ask this Court to: (1) vacate the Order of the Superior Court; (2) direct that the Superior Court enter judgment in favor of the Ethics Commission declaring that it possesses jurisdiction to proceed with its complaint against Irons; and (3) direct that the matter be remanded to the Ethics Commission and allowed to proceed through the normal enforcement process.

## Standard of Review

Review of a case on *certiorari* is limited to an examination of "the record to determine if an error of law has been committed." Gaumond v. Trinity Repertory Co., 909 A.2d 512, 516 (R.I. 2006)(quoting City of Providence v. S & J 351, Inc., 693 A.2d 665, 667 (R.I. 1997)). "We do not weigh the evidence on certiorari, but only conduct our review to examine questions of law raised in the petition." Malachowski v. State, 877 A.2d 649, 653 (R.I. 2005)(quoting Jeff Anthony Properties v. Zoning Bd. of Review of North Providence, 853 A.2d 1226, 1229 (R.I. 2004)).

"Th[e] Court undertakes a *de novo* review of questions of law, as well as mixed questions of law and fact, that involve issues of constitutional dimension." State v. Oliveira, 961 A.2d 299, 308 (R.I. 2008)(citing State v. Lead Industries Association, Inc., 951 A.2d 428, 464 (R.I. 2008); State v. Monteiro, 924 A.2d 784, 790 (R.I. 2007)).

## I. THE SUPERIOR COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF THE SPEECH IN DEBATE CLAUSE.

The Superior Court's Decision dismissing the ethics complaint against Irons rigidly applied the holdings of cases from Rhode Island and the United States Supreme Court that set forth the history, purpose and application of the Speech in Debate Clause, but did not involve a conflicting Ethics Amendment. Decision, at p. 7-12. As will be discussed below, the history and legal impact of the Speech in Debate Clause, in isolation, is not in dispute. However, the Superior Court should have considered these long-understood principles of Speech in Debate immunity in light of the 1986 enactment of the Ethics Amendment; it did not. Instead, it relied on Speech in Debate case law that did not consider the impact of subsequent constitutional amendments.

### A. Every Case Concerning Speech in Debate that Was Relied Upon by the Superior Court is Distinguishable from This One, in that None of the Cases Involved the Interaction of a Later-Enacted Ethics Amendment that was Clearly Intended to Authorize the Regulation of a Legislator's Use of Office and Conflicts of Interest.

The Speech in Debate Clause of the Rhode Island Constitution is a single sentence found in Article VI, Section 5, which reads as follows: "For any speech in debate in either house, no member shall be questioned in any other place." Id. Because the clause exists in both the Rhode Island and the United States Constitutions, and both trace their histories to the same pre-colonial English roots, the Rhode Island Supreme Court has indicated that one may rely upon United States Supreme Court pronouncements on the subject. Holmes v. Farmer, 475 A.2d 976, 981-82 (R.I. 1984).

If one momentarily sets aside the 1986 Ethics Amendment and its impact, then the history, purpose, and general application of the speech in debate clause is not in dispute and has been clearly set forth by the courts.

> The principle that legislators are absolutely immune from liability for their legislative activities has long been recognized in Anglo-American law. This privilege "has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries" and was "taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation."

Bogan v. Scott-Harris, 522 U.S. 44 (1998)(quoting (Tenney v. Brandhove, 341 U.S. 367, 372-375 (1951)).

The Superior Court relied heavily on this Court's exposition on Speech in Debate immunity in Holmes v. Farmer, 475 A.2d 976 (R.I. 1984), a case that was decided prior to the 1986 enactment of the Ethics Amendment and, therefore, without reference to it. Decision, at pp. 7-10, 16. Holmes was an appeal by the Rhode Island Republican Party from the Superior Court's dismissal of a complaint challenging the constitutionality of legislative redistricting of

the House of Representatives. During the trial, the court refused to allow the plaintiff to call legislators to testify concerning the formation of the House plan, citing to issues of legislative privilege and relevance. This decision was affirmed by the Supreme Court. The Court held that the Speech in Debate Clause protected the legislator-witnesses from being questioned in the private lawsuit, since the proposed testimony concerned the actions and motivations of the legislators in proposing and passing the reapportionment plan. 475 A.2d at 984. "The speech in debate clause contained in Rhode Island's Constitution confers a privilege on legislators from inquiry into their legislative acts or into the motivation for actual performance of legislative acts that are clearly part of the legislative process." Id. at 983 (citing United States v. Brewster, 408 U.S. 501, 515-16 (1972)). Although the Holmes case supports and explains the existence of legislative immunity in appropriate cases, this Court also observed that its holding was limited to the facts of that case. Id.

Holmes, and every other Rhode Island Speech in Debate case that the Superior Court relied on in its Decision, without exception, involved lawsuits brought by private parties against legislators, and therefore did not reference the Ethics Amendment or the Ethics Commission. See Holmes, 475 A.2d 976 (R.I. 1984)(private lawsuit brought by republican party regarding redistricting); Marra v. O'Leary, 652 A.2d 974 (R.I. 1995)(in civil lawsuit filed by *pro se* litigant, motion to dismiss properly granted in favor of defendant legislators); Maynard v. Beck, 741 A.2d 866 (R.I. 1999)(in a § 1983 action filed by local property owners and former public officials, Superior Court properly dismissed complaint pursuant to common law doctrine of legislative immunity). Since those cases all involved lawsuits filed by private parties, and not matters before an Ethics Commission with constitutionally granted jurisdiction, this Court's

reversal of the Superior Court's Decision in the instant case will not reverse or in any way modify the Court's prior decisions in Holmes, Marra or Maynard.

After discussion these Rhode Island Speech in Debate cases in its Decision, the Superior Court erroneously determined that its only "duty, therefore, is to determine whether the allegations made against Irons 'fall within the parameters of [his] position[]' and are thus 'a part of the legislative process' that are beyond the reach of any other branch of government." Decision, at p. 9 (quoting Marra, 652 A.2d at 975; Holmes, 475 A.2d at 983). It was clear error for the Superior Court to so limit its analysis. The Superior Court's analysis ought not have merely applied the Speech in Debate Clause to the allegations against Irons and dismissed the ethics complaint if it determined that Irons' actions were "legislative" in nature; rather, the court ought have considered whether the Ethics Amendment's clear grant of jurisdiction and authority distinguished Irons' case from Holmes, Marra, and Maynard.

For the same reasons, the United States Supreme Court cases cited to in the Superior Court Decision, while helpful in describing the history and effect of the Speech in Debate Clause in general, do not dictate an outcome in the instant matter because there is no federal counterpart to the Rhode Island Ethics Amendment. Accordingly, in none of the federal cases cited in the Decision does the United States Supreme Court interpret the Speech in Debate Clause in light of a later-enacted constitutional provision that, on its face, authorizes investigations into a legislator's use of position and conflicts of interest.

### B. The Ethics Amendment's Grant of Authority to the Ethics Commission Does not Violate the Principles of Separation of Powers that Underlie the Speech in Debate Clause.

In Holmes, this Court viewed the Speech in Debate Clause as a component of the separation of powers doctrine, protecting a legislator from having to explain or defend his or her motives to the executive or judicial branch. This Court stated that:

> [t]he speech in debate clause has two definite purposes: first, "to preserve the constitutional structure of separate, co-equal, and independent branches of government [citations omitted], and second, to protect individual legislators from executive and judicial oversight that realistically threatens to control his conduct as a legislator."

475 A.2d at 985.

This Court has previously determined that the Ethics Commission's unique constitutional mandate and structure permit narrow intrusions into legislative areas traditionally protected by separation of powers principals. "[T]he ethics commission combines the functions of a legislative body in adopting and promulgating an ethical code, of an executive body in prosecuting violations of the code, and of a judicial body in adjudicating alleged violations." In re Advisory to the Governor (Separation of Powers), 732 A.2d 55, 61 (R.I. 1999). Because of this combination of powers, it is expected that the Commission's exercise of these powers will at least minimally infringe upon the traditional and pre-1986 powers of each branch. Such *de minimus* infringements, when in furtherance of the Commission's important constitutional mission, do not violate the principals of separation of powers that underscore the Speech in Debate privilege. See id.

For example, as previously discussed, in the 1992 Advisory Opinion this Court found that the Ethics Commission did not violate separation of powers principals with its Constitutional power to legislate substantive ethics laws, a power that clearly infringed upon the legislative

power of the General Assembly as granted to it by the Legislative Powers Clause of the Rhode Island Constitution in Article VI, Section 2. See 612 A.2d 1. This Court held that in order for there to be a constitutional violation of separation of powers, there must be:

> an assumption by one branch of powers that are central or essential to the operation of a coordinate branch, provided also that the assumption disrupts the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the Government.

Id. at 14 (emphasis added)(quoting State v. Jacques, 554 A.2d 193, 196 (R.I. 1989)(quoting Chadha v. Immigration and Naturalization Service, 634 F.2d 408, 425 (9th Cir. 1980))). The Court noted that because the Commission's legislative authority was limited to the field of ethics, such authority did not eliminate the legislature's ability to also legislate ethics laws that do not conflict with those enacted by the Commission, and that this structure was necessary to implement a legitimate policy of honesty, integrity and accountability. Id.

Given this Court's previous ruling that the Ethics Commission's legislative authority did not unconstitutionally conflict with the primary source of legislative *authority*, the Legislative Powers Clause, the Superior Court's Decision that the Commission's enforcement authority unconstitutionally conflicts with legislative *immunity* defies logic. Consistent with this Court's reasoning in the 1992 Advisory Opinion, the Ethics Commission's decision to proceed with its constitutional mandate to investigate and enforce conflict of interest and use of office provisions against Irons does not violate the Speech in Debate Clause or the separation of powers principals upon which it is based.

In discussing separation of powers, it is worth noting that there is no concern that the Ethics Commission may attempt to overrule any legislative decision-making.[5] The Ethics

[5] The Commission's inability to overrule the legislature is significant to the question of whether its jurisdiction too broadly interferes with the legislature, given that in Almond v. Rhode Island

Commission does not have the authority to overrule any actions of the General Assembly. Accordingly, the actions of Irons and of the Rhode Island Senate will stand regardless of any action taken by the Ethics Commission on this complaint.

Furthermore, the Ethics Commission has not questioned Irons' or any other legislator's *motive* for participating in the legislative process. It is a public official's participation, regardless of motive, that is prohibited when his or her actions financially benefit a business associate.[6] This is a key fact that the Superior Court overlooked in its Decision.

Finally, and most importantly, an investigation into use of position and conflict of interest charges against all state elected officials is necessary to carry out the intent of the framers and voters, and to implement the legitimate policies set forth in the Rhode Island Constitution to ensure that:

> public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, *and not use their position for private gain or advantage.*

R.I. Const. art. III, sec. 7 (emphasis added).

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Lottery Commission, 756 A.2d 186, 207 (R.I. 2000), the Court noted that its decision in Holmes "rel[ied] upon *The Federalist* No. 47, at 343 (James Madison) (Dawson ed., 1864). The section of Federalist No. 47 discussed in Holmes involved James Madison's concern over the importance of not allowing one branch of government to overrule the decisions of another branch. Holmes, 475 A.2d at 982.

[6] Furthermore, in many cases, particularly those involving state-wide issues, even participation is not prohibited. The Code of Ethics contains a well-known "class exception" that allows a public official's participation in a matter that financially impacts a business associate "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group." R.I. Gen. Laws § 36-14-7(b).

## II. THE SUPERIOR COURT ERRED IN FAILING TO FOLLOW THE ANALYSIS USED BY THIS COURT IN THE ANALOGOUS CASE OF IN RE ADVISORY OPINION TO THE GOVERNOR, 612 A.2d 1 (R.I. 1992).

Instead of relying on Speech in Debate cases that did not involve the application of a later-enacted constitutional amendment, the Superior Court should have followed this Court's decision and analysis in the case of In re Advisory Opinion to the Governor, 612 A.2d 11 (R.I. 1992)(hereinafter the "1992 Advisory Opinion"), which concerned a directly analogous conflict between the Ethics Amendment and the Legislative Powers Clause[7] that vests all legislative power in the General Assembly. Of particular importance, in the 1992 Advisory Opinion this Court addressed Irons' central argument that the Ethics Amendment may not, by *implication*, modify another section of the Constitution. Disagreeing with that premise, this Court held in the 1992 Advisory Opinion that the 1986 Ethics Amendment impliedly modified the Legislative Powers Clause through its plain language and as evidenced by reliable extrinsic evidence of intent, to divest the General Assembly of its primary legislative power in the narrow area of ethics, placing that power with the independent and nonpartisan Ethics Commission. See Id. at 13.

As will be demonstrated, the arguments that were accepted and relied upon by the Superior Court in the instant case, and which formed the basis for its flawed Decision, are identical to arguments that this Court rejected in the 1992 Advisory Opinion. Conversely, the Ethics Commission's arguments in the instant case mirror and apply this Court's prior analysis and findings in that analogous case. The Superior Court should have similarly followed this

[7] R.I. Const. art. VI, sec. 2. The Legislative Powers Clause reads: "The legislative power, under this Constitution, shall be vested in two houses, the one to be called the senate, the other the house of representatives; and both together the general assembly. * * *"

Court's analysis, and in failing to do so, issued a Decision that is incorrect as a matter of law and should be reversed.

### A. The Facts of the 1992 Advisory Opinion and the Questions Presented are Directly Analogous to Those in the Instant Case.

The events leading up to the request for the 1992 Advisory Opinion concerned a 1991 resolution by the Ethics Commission to unilaterally amend and add new prohibitions to the Code of Ethics, previously enacted by the legislature, without seeking or obtaining the approval of the General Assembly. Id. at 4. This authority to legislate on substantive ethics sprang, the Ethics Commission argued, from the 1986 Ethics Amendment's grant to the Ethics Commission of the authority to "adopt a code of ethics including, but not limited to, provisions on conflict of interest . . . [and] use of position." Id. at 3-4 (quoting R.I. Const. art. III, sec. 8). In response to this resolution, the Governor at that time, joined by other opponents to the Ethics Commission's authority (hereinafter collectively, "opponents"), submitted a request for an advisory opinion from this Court concerning the following three questions:

> (1) whether [the Ethics Amendment] confers upon the Rhode Island Ethics Commission (commission) the power, independent of the Rhode Island General Assembly, to enact substantive ethics laws governing all elected and appointed officials and employees of state and local governments . . . ;
>
> (2) whether [the Ethics Amendment] *divests* the General Assembly of some or all of its legislative powers to enact ethics laws governing public officials and employees and instead vests that power in the commission; and
>
> (3) whether [the Ethics Amendment] is valid under the United States Constitution and consistent with the Rhode Island Constitution if it is interpreted to confer upon the commission the power to enact substantive ethics laws governing public officials and employees, independent of and/or to the exclusion of the General Assembly.

Id. at 4 (emphasis added).

The above questions are directly analogous to the issues decided by the Superior Court in this matter, namely: (1) whether the Ethics Amendment conferred upon the Ethics Commission the authority to enforce conflict of interest and use of position prohibitions against all state elected officials, including legislators; (2) whether the Ethics Amendment's conferral of such enforcement authority divested the legislature of a portion of the legislative immunity that had existed through the Speech in Debate Clause; and (3) whether the Ethics Amendment's grant of such enforcement authority is consistent with the Rhode Island Constitution.

### B. The Factors and Arguments Relied Upon by the Superior Court in the Instant Case Were Previously Rejected by This Court in the 1992 Advisory Opinion.

Opponents of the Ethics Commission's position in the 1992 Advisory Opinion made the same, ultimately unsuccessful, arguments that the Superior Court utilized to support its Decision in this case, arguments that this Court did not find persuasive in the 1992 Advisory Opinion. These similar arguments, and this Court's consideration of them, are addressed below.

#### 1. The Superior Court Erred in Failing to Give Effect to the Plain Language of the Ethics Amendment Itself.

The Superior Court erred in not applying the plain and ordinary meaning of the words used in the Ethics Amendment to determine that legislators were intended to be included among the "elected . . . officials . . . of state government" who are "subject to" a "code of ethics including, but not limited to, provisions on conflicts of interest [and] use of position[.]" R.I. Const. art. III, sec. 8.

Instead of applying the plain language of the Ethics Amendment, the Superior Court wrote that the Ethics Commission "asks too much of the Court" with its argument that the Ethics Amendment's reference to "all elected officials" was meant to include legislators, who would be subject to the use of position and conflict of interest provisions enumerated in the Ethics

Amendment. Decision at p. 19. The Superior Court further stated that this argument was "not founded upon existing law or precedent." Id. The Ethics Commission's opponents in the 1992 Advisory Opinion made similar arguments that were rejected by this Court, claiming that the Ethics Amendment's conferral of authority to the Ethics Commission to "adopt" a Code of Ethics did not clearly grant the Ethics Commission the authority to make its own substantive ethics laws. See id.

This Court has long held that "words in a constitution are to be given their usually accepted meaning." Davis v. Hawksley, 199 R.I. 453, 455, 379 A.2d 922, 923 (1977). "When a constitutional provision is clear, it speaks for itself." McKenna v. Williams, 874 A.2d 217, 232 (R.I. 2005).

> This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication.

Gelch v. State Board of Elections, 482 A.2d 1204, 1221 (R.I. 1984)(quoting 1 Cooley, *A Treatise on the Constitutional Limitations*, at 127-129 (8th ed. 1927)). This Court applied the above principles in the 1992 Advisory Opinion (612 A.2d at 7), noting that the Ethics Amendment clearly conferred authority upon the Ethics Commission to draft the Code of Ethics. Id. at 8.

Likewise, in the instant case, the plain and ordinary words used in the Ethics Amendment clearly grant the Ethics Commission the authority "to investigate violations of the code of ethics, and to impose penalties" against *all* persons subject to the Code of Ethics. R.I. Const. art. III, sec. 8. The Ethics Amendment also clarifies exactly who shall be subject to the Code of Ethics. "All elected . . . officials . . . of state . . . government . . . shall be subject to the code of ethics." Id. There is no ambiguity as to the meaning of "all elected officials," and there is no dispute as to the meaning of the word "shall."

Since it is undisputed that the Ethics Amendment expressly grants the Ethics Commission the authority to investigate violations of the Code of Ethics, and it is also uncontraverted that legislators are expressly subject to the Code of Ethics, the only remaining issue is the determination of what matters are covered by the "Code of Ethics." Fortunately, this issue too has been addressed. The Ethics Amendment enumerates matters that must be included in the Code of Ethics,

> including, but not limited to, provisions on *conflicts of interest*, confidential information, *use of position*, contracts with government agencies and financial disclosure.

R.I. Const. art. III, sec. 8 (emphasis added).

When read together, the plain language used in the Ethics Amendment requires that *all* state elected officials, which includes legislators, are subject to a Code of Ethics that *shall* include provisions on "conflicts of interest" and improper "use of position." The ethics charges against Irons in the instant matter allege violations of these same constitutionally mandated provisions, namely, section 36-14-5(a) relating to conflicts of interest and section 36-14-5(d) relating to use of public office. See Order and Finding of Probable Cause; App. Tab B.

### 2. The Superior Court Erred in Failing to Consider the Transcripts of the Constitutional Convention, Which Show the Framers' Intent to Confer Jurisdiction Over the Legislature.

The Superior Court Decision in the instant case failed to acknowledge the many references in the transcripts of the Constitutional Convention that clearly support a finding that it was the framers' intent to include legislators within the Ethics Commission's full jurisdiction.

In the 1992 Advisory Opinion, the Ethics Commission opponents argued that nowhere in the transcripts of the Constitutional Convention is it expressed that the Ethics Amendment is meant to modify the Legislative Powers Clause. 612 A.2d at 6. Similarly, the Superior Court

in its Decision noted that the transcripts contained "no mention whatsoever of the Speech in Debate Clause. . . ." Decision at p. 14, n.7. It was error for the Superior Court to rely solely on the absence of references in the transcript to "Speech in Debate" than on the existence of numerous, unambiguous references to the framers' intent to have the Ethics Commission regulate the conduct of the General Assembly.

This Court reviewed the transcripts of the Constitutional Convention in the 1992 Advisory Opinion, and was unconcerned by the failure to reference a partial repeal of the Legislative Powers Clause. Instead, this Court relied on the framers' many comments concerning the broad scope of the Ethics Amendment, finding it "abundantly clear that the framers expressly intended to limit the General Assembly's power to enact substantive legislation regarding ethics."[8] 612 A.2d at 10.

The Superior Court's concern in the instant case with the framers' lack of reference to Speech in Debate mirrors the discounted arguments of the opponents in the 1992 Advisory Opinion, and completely ignores the framers' multiple statements evidencing their intent to specifically include legislators within the Ethics Commission's jurisdiction. The following is a sampling of these references:

> DELEGATE PHILIPS: [ ] I think that what we are talking about should cover *everybody* who's employed by or working for or serving the state, and that should be not only state officials appointed and *elected*, but local officials and anyone serving on a commission voluntarily or not. . . .

Transcript of Constitutional Convention Committee on Ethics, (May 22, 1986); p. 34 (emphasis added); App. Tab I.

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[8] "[W]hen one is construing constitutional provisions, it is indeed proper to consult what extrinsic sources are available . . . [such as] the proceedings of the Constitutional Convention itself. . . ." In re Advisory Opinion to the Governor, 612 A.2d 1, 7-8 (R.I. 1992). "A review of the proceedings of the constitutional convention provides valuable insight into the intent of the framers. . . ." Id. at 9-10.

> THE CHAIRMAN: I just wanted to throw in a few quick thoughts. When I put in 'all *elected* and appointed officials of this state,' I take that to mean all *elected* officials – state and local – because its of this state.

Id. at pp. 35-36 (emphasis added).

> DELEGATE GELCH: [I]t's the old statement we all love our legislature, but we don't – when we look at the whole legislature, we don't trust the legislature. What we are trying to do is provide *a code of ethics to raise the level of performance of our legislature*, executive and judiciary.

Id. at p. 39 (emphasis added).

> DELEGATE PHILLIPS: . . . Second, I think we should say what the conflict of interest code or what the conflict of interest issue covers – really spell it out, and I'd suggest that it's *all appointed and elected officials* in state and local government, and employees of state and local agencies and commissions. There may be more, but I think that should be separately spelled out.

Id. at p. 54 (emphasis added).

> DELEGATE GELCH: . . . . However, there's been so much corruption, there's been such a lack of respect for government that we are developing a philosophy in this Constitutional Convention of *asking the people to place restrictions upon our elected officials*. . . .

Id. at p. 27 (emphasis added).

> THE CHAIRMAN: . . . To be quite frank, Rhode Island has never really had a high ethical standard for its officers and one of the reasons you have a Constitution is really to say how much a government can do and what it can't do. . . . We are *going a step further* and saying not only how much power they have, but *what their conduct should be while they're holding office.*

Id. at pp. 35-36 (emphasis added).

> DELEGATE PHILIPS: Could I just ask if the following are covered because again, you read it and I didn't catch everything. *Is self-dealing prohibited*?
>
> THE CHAIRMAN: Well, it would be.

Id. at pp. 81-82 (emphasis added).

> THE CHAIRMAN: Personally, I think, and let's face it -- we all distrust the General Assembly.

Id. at p. 58 (emphasis added).

> DELEGATE MILETTE: [W]e would direct that a code of ethics be developed. . . . [T]he code of ethics will be developed, and put the responsibility on the Conflict of Interest Commission instead of on the state legislature. Now that takes the fox away from the chickens. . . . Now if we are all concerned about the state legislature doing it or doing it right, *let's take it away from them. Let's give it to another body.*

Id. at 60-61 (emphasis added). Inexplicably, the Superior Court failed to cite to any of the above evidence of the framers' intent.

The Superior Court also declined to consider the final report to the Constitutional Convention concerning the proposed Ethics Amendment. On May 27, 1986, the Ethics Committee issued a Report of the Ethics Committee on A Resolution Relating to Ethics, where, under the heading, "Persons Subject to Code of Ethics," it was written that "the Committee feels strongly that *all* governmental officials should be subject to the code of ethics." App. Tab J Report of the Ethics Committee on a Resolution Relating to Ethics 86-0060, Sub. A, (May 27, 1986); p. 5 (emphasis added); App. Tab J.

With so many indications of framers' intent to include legislators within the Ethics Commission's full jurisdiction and no mention whatsoever of legislative immunity, the Superior Court erred in relying solely on the absence of a reference in the transcripts to a need to modify the Speech in Debate Clause. App. Tab G; p. 14, n. 7. Again, this failure by the Superior Court to follow the guideposts set by this Court in the 1992 Advisory Opinion led to a Decision that is flawed as a matter of law and should be reversed.

### 3. The Superior Court Erred in Failing to Consider the History of the Times and State of Things Existing in 1986.

In interpreting the meaning of the Ethics Amendment, the Superior Court should have considered the history leading up to the Ethics Amendment, in order to better understand that the intent of the framers and voters was to drastically change the way government officials were

regulated in Rhode Island. However, the Superior Court Decision fails to make a single reference to the history of the Ethics Amendment as set forth so clearly, and relied upon, by this Court in the 1992 Advisory Opinion. The refusal to consider such strong indicia of intent led to the Superior Court's incorrect Decision.

This Court, construing the Ethics Amendment in the 1992 Advisory Opinion, made a detailed analysis of the history of the times and the state of things as they existed when the 1986 Ethics Amendment was framed and adopted, in order "to focus on factors that may have provided the motivation for the framers and the electorate to confer the power to legislate substantive ethics laws upon the commission." 612 A.2d at 11. This historical analysis has already been discussed in the Introduction to this Brief, *infra*. Considering that history and the rampant corruption that existed at that time, this Court remarked:

> Without a doubt, as a result of the dubious climate in which all levels of government found themselves, the framers of the ethics amendment to the constitution believed that the only means of restoring public confidence in government was to divest the General Assembly of its legislative power regarding ethics.

Id. at 13. The Superior Court erred in not similarly considering this valuable extrinsic evidence of framers' intent.

#### 4. The Superior Court Erred in its Failure to Consider Legislation that was Immediately Passed in Response to the Ethics Amendment.

The Superior Court failed to consider any of the legislation that was enacted immediately following, and in direct response to, the adoption of the Ethics Amendment, even though this Court has stated that such a review provides valuable extrinsic evidence of the meaning and intent of the Ethics Amendment. 612 A.2d at 7-8. As this Court has held,

> when one is construing constitutional provisions, it is indeed proper to consult

> . . . legislation relating to the constitutional provision in question adopted at the same time as the constitutional amendment or subsequently.

612 A.2d at 7-8. In the instant case, the Superior Court should similarly have considered legislation passed in the wake of the Ethics Amendment. If it had done so, it would have found substantial evidence in support of the Ethics Commission's full jurisdiction over legislators, notwithstanding the Speech in Debate Clause.

After the passage of the Rhode Island Ethics Amendment, the General Assembly in 1987 passed enabling legislation as well as the first Code of Ethics (R.I. Gen. Laws §§ 36-14-1 *et seq.*). 1987 R.I. Pub. Laws, ch. 195. Had the General Assembly believed that it was legislatively immune from conflict of interest and use of position provisions, it would have included *some* reference to such immunity in the Code of Ethics it drafted; it did not. This is valuable evidence of how the General Assembly viewed the purpose of the Ethics Amendment.

Instead of providing for or even referencing their own immunity, the legislative drafters of the 1987 Code of Ethics expressly stated that "State and municipal elected officials" are among those who "*shall be* subject to the provisions of the Rhode Island Code of Ethics in government," and further proceeded to define "state or municipal elected official" as "any person holding *any elective public office* pursuant to a general or special election . . . ." 1987 R.I. Pub. Laws, ch. 195, sec. 3 (enacting R.I. Gen. Laws § 36-14-4(a); § 36-14-2(1))(emphasis added). Notwithstanding that it had just included itself among those subject to the entire Code of Ethics, the General Assembly went on to enact sections 36-14-5(a) (conflict of interest) and 5(d) (use of position), the very two provisions of the Code of Ethics from which Irons now claims immunity. 1987 R.I. Pub. Laws, ch. 195, sec. 3.

Furthermore, the General Assembly itself statutorily conferred upon the Ethics Commission the authority to remove from office "any state or municipal elected official . . . not

subject to impeachment" upon a finding of a "serious, knowing and wilful [sic] violation of section 36-14-5(c), section 36-14-5(d) or section 36-14-5(g)." 1987 R.I. Pub. Laws, ch. 195, sec. 3 (enacting R.I. Gen. Laws § 36-14-14(a) and (b)(1)). Section 36-14-5(d), one of the three offenses that may justify removal from office, is the "use of office" provision that Irons is alleged to have violated. The legislature must have understood that it would be subject to this removal provision, since legislators are the *only* state elected officials that are "not subject to impeachment." See R.I. Const. art. XI, sec. 3 ("The governor and all other executive and judicial officers shall be liable to impeachment.").

Again, the failure of the Superior Court to look at this extrinsic evidence, so valued by this Court in the 1992 Advisory Opinion, lead to its incorrect Decision.

### C. In 1992 Advisory Opinion the Court Held that an Affirmative Grant of Regulatory Authority in a Later-Enacted Provision of the Constitution Necessarily Implies a Limitation on a Previously Enacted Provision.

Opponents of the Ethics Commission's power in the 1992 Advisory Opinion made the same argument that the Superior Court mistakenly relied upon in reaching its Decision, namely, that the Ethics Amendment should not be read to repeal by implication any older provision of the Constitution. Likewise, the Superior Court improperly relied on the fact that the 1986 Constitutional Convention renumbered the Speech in Debate Clause from article IV, section 5, to article VI, section 5, but did not insert any new reference in Article VI to the Ethics Amendment. App. Tab G; p. 14. A similar argument was made in the 1992 Advisory Opinion.

In the 1992 Advisory Opinion, the Ethics Commission opponents noted that nothing in the 1986 amendments made explicit reference to an intent to divest the General Assembly of its primary legislative authority found in the Legislative Powers Clause of Article VI, Section 2. The Court flatly rejected this argument, stating that

> [w]e have ruled that the terms of [the Ethics Amendment] expressly confer upon the commission the limited and concurrent power to enact substantive ethics laws. Accordingly, it logically follows that such ***an affirmative grant of power to the commission necessarily implies a limitation*** on the part of the General Assembly or any other body.

Id. at 14 (emphasis added).

As previously discussed, there is overwhelming extrinsic evidence of the framers' and voters' intent to subject the legislature to the provisions of the Code of Ethics relating to use of position (section 36-14-5(d)) and conflicts of interest (section 36-14-5(a)). Such an affirmative grant of jurisdiction to the Ethics Commission necessarily implies a narrow exception to legislative immunity. This narrow exception applies only to matters pending before the independent and nonpartisan Ethics Commission. Otherwise, as to questioning by any other person or entity, legislators continue to enjoy the full protection of the Speech in Debate Clause.

## III. THE SUPERIOR COURT ERRED IN THE WAY IT ATTEMPTED TO HARMONIZE THE ETHICS AMENDMENT WITH THE SPEECH IN DEBATE CLAUSE, AND INSTEAD SHOULD HAVE HELD THAT THE ETHICS AMENDMENT'S CONFERRAL OF JURISDICTION OVER LEGISLATORS IS IN DIRECT CONFLICT WITH THE ABSOLUTE IMMUNITY OFFERED BY THE SPEECH IN DEBATE CLAUSE.

The Superior Court compared the Ethics Amendment's jurisdictional grant with the immunity provided by the Speech in Debate Clause. Although the Court properly determined that "these separate constitutional provisions offer obviously divergent interests and protections," it then attempted to "harmonize" them "to coexist so that both may stand and be operative." Decision, at p. 15. Instead, the Superior Court should have recognized that the Ethics Amendment's conferral of jurisdiction over the legislature was irreconcilably repugnant to the Speech in Debate Clause's conferral of legislative immunity.

While it is true that, when possible, different portions of the Constitution should be read in harmony to give effect to both, see id. at 11, 13-14, to the extent that the requirements of one

clause cannot be reconciled with the other, the older and less specific provision must yield to the one more recently enacted:

> It is stated as a recognized principle of construction of written constitutions, as well as of statutes, that of two irreconcilably repugnant provisions therein the one which is last in order of time is to be preferred, particularly where the latter is more comprehensive and specific than the former.

Opinion to the Governor, 78 R.I. 144, 149-150, 80 A.2d 165 (1951)(citing Quick v. White-Water Township, 7 Ind. 570 (1856); Gulf, Colorado & Santa Fe Ry. v. Rambolt, 67 Texas 654 (1887)).

Rhode Island's Constitution is unlike that of the United States, in that it contains an Ethics Amendment that directly conflicts with legislative immunity. The Superior Court failed to recognize this difference and instead attempted to "harmonize" Speech in Debate immunity with Rhode Island's unique Ethics Amendment by giving full effect to the earlier provision and then decimating the plainly granted jurisdiction of the latter. Decision at pp. 15-17. There is nothing "harmonious" about such a result which ignores the basic principles of constitutional construction.

The Superior Court's Decision necessarily renders meaningless the plain and clear language used in the later-enacted Ethics Amendment, and the established intent of the framers and voters. The Superior Court's interpretation causes the phrase "all elected . . . officials . . . of state . . . government" to mean "all elected officials of state government except legislators" or, perhaps more accurately, "just the five general officers." Such a result, rendering one clause of the Constitution invalid as it is plainly written, is inconsistent with the Court's long-held rules of constitutional interpretation.

> When the validity of the amendment is passed upon, "'[e]very reasonable presumption, both of law and fact, is to be indulged in favor of the validity of an amendment to the Constitution when it is attacked after its ratification by the people' . . . and its unconstitutionality should not be declared except upon 'inescapable grounds.'"

612 A.2d at 16 (quoting Opinion of the Justices, 133 A.2d 790, 792 (N.H. 1957)(citing Chronicle & Gazette Pub. Co. v. Attorney General, 48 A.2d 478 (N.H. 1946))).

The Ethics Commission's constitutional authority over the legislature cannot be reconciled with the absolute immunity provided by the Speech in Debate Clause. Therefore, the general immunity of the Speech in Debate Clause must yield to the extent necessary to accommodate the more recent, specific, comprehensive and plainly worded Ethics Amendment. Giving full effect to the Ethics Amendment respects the understood rules of constitutional construction, and preserves all of the protections afforded legislators by the Speech in Debate Clause as to questioning from any person or entity *except* the constitutionally mandated, independent, and nonpartisan Ethics Commission.

## CONCLUSION

In 1986, after living through years of rampant corruption at all levels of government, the People of the State of Rhode Island believed that it was imperative that they make drastic changes to the way their government operated. They did so through the enactment of an Ethics Amendment that was unique among the states, creating an independent Ethics Commission with the authority to enact ethics laws and to enforce such laws against all state and municipal officials and employees. The Ethics Commission's jurisdiction over legislators was expressly intended by the framers of the Ethics Amendment and by the people who overwhelmingly voted to amend their Constitution. It was also presumed by the General Assembly who obeyed the people's Constitutional mandate by enabling the Ethics Commission and by enacting the initial Code of Ethics that expressly subjected legislators to the Code's provisions on conflict of interest and use of position.

The Superior Court's Decision in this matter is a serious and significant disenfranchisement of the people of Rhode Island who overwhelmingly supported the Ethics Amendment. It misconstrues and undoes the difficult work of the framers of the Ethics Amendment, twists the meaning of the plain language it employs, and ignores the well-settled principles of construing constitutional provisions. For all of the reasons cited, this Court should vacate the judgment of the Superior Court, direct that judgment enter in favor of the Ethics Commission declaring that it possesses jurisdiction to proceed with its complaint against Irons, and direct that the matter be remanded to the Ethics Commission and allowed to proceed through the its long-established enforcement process.

Respectfully Submitted,

RHODE ISLAND ETHICS COMMISSION,
By its Attorneys,

Dated: 3-17-09

Jason Gramitt, Esq. (5636)
Katherine D'Arezzo, Esq. (5710)
Rhode Island Ethics Commission
40 Fountain Street
Providence, RI 02903
(401) 222-3790
jgramitt@ethics.state.ri.us
kdarezzo@ethics.state.ri.us

**CERTIFICATION**

I certify that on the 17th day of March, 2009, I forwarded a copy of this document via regular mail to:

John A. Tarantino, Esq.
Victoria M. Almeida, Esq.
Patricia K. Rocha, Esq.
Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903.

Thomas R. Bender, Esq.
Hanson Curran LLP
146 Westminster Street
Providence, RI 02903

Mark W. Freel, Esq.
Jon M. Anderson, Esq.
Caroline F. Turcotte, Esq.
Edwards Angell Palmer & Dodge LLP
2800 Financial Plaza
Providence, RI 02903

Thomas M. Dickenson, Esq.
1312 Atwood Ave.
Johnston, RI 02919